UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA
RENO DIVISION

IN RE:	)	**CASE NO: 09-52477-GWZ**
	)	**CHAPTER 11**
	)	
STATION CASINOS, INC,	)	**Reno, Nevada**
	)	
	)	**Monday, June 21, 2010**
Debtor.	)	
	)	**(3:55 a.m. to 5:24 p.m.)**

EMERGENCY MOTION BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR STAY PENDING APPEAL OF ORDER GRANTING MOTION FOR ORDER ESTABLISHING BIDDING PROCEDURES AND DEADLINES RELATING TO SALE PROCESS FOR SUBSTANTIALLY ALL OF THE ASSETS OF STATIONS CASINOS, INC AND CERTAIN "OPCO" SUBSIDIARIES

BEFORE THE HONORABLE GREGG W. ZIVE,
CHIEF UNITED STATES BANKRUPTCY JUDGE

Appearances:	**See next page**
Court Reporter:	**Recorded; FTR**
Transcribed by:	**Exceptional Reporting Services, Inc** **14493 South Padre Island Drive, #A-400** **Corpus Christi, TX 78418-5940** **361 949-2988**

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The Bank of Scotland

Reno, Nevada; Monday, June 21, 2010; 3:55 p.m.

(Call to Order)

THE COURT: Be seated.

May I have appearances in the courtroom, please?

MS. AXELROD: Good afternoon, your Honor; Brett Axelrod, Fox Rothschild, for the unsecured creditors committee.

THE COURT: Are you going to argue?

MS. AXELROD: I am, your Honor.

THE COURT: Thank you.

MR. BEESLEY: Your Honor, Bruce Beesley and Laury MacCauley of Lewis and Roca, and Tom Kreller of Milbank Tweed Hadley and McCloy for the debtor.

THE COURT: Are you going to argue, Mr. Kreller?

MR. KRELLER: Yes, I am.

THE COURT: Thank you.

MS. SMITH: Jennifer Smith, Nevada counsel for the CMBS lenders, and, no.

THE COURT: Who is going to argue?

MS. SMITH: We have not filed a pleading.

THE COURT: That's what I thought. I just wanted to make sure; thank you.

MR. HICKS: Your Honor, Bud Hicks of McDonald, Carano Wilson, counsel for Deutsche Bank as administrative agent for the pre-petition senior secured lenders. I will not be arguing. There will be counsel from Simpson Thacher arguing on

this.

THE COURT: Can counsel for Simpson Thacher hear me?

MR. QUSBA: Yes, your Honor; a bit difficult, but, yes. It's Sandy Qusba from Simpson Thacher and Bartlett.

THE COURT: I can hear you, which is more important. And are you going to argue on behalf of your client?

MR. QUSBA: I'm sorry, your Honor; if you said, 'Am I arguing on behalf of our clients?', the answer is yes.

THE COURT: Thank you.

MR. PARDO: I may be in the wrong hearing. Is this with Judge Zive?

THE COURT: Yes. Who was that that just asked the question?

MR. PARDO: Rene Pardo in Toronto.

THE COURT: No, you're done, sir. You can hang up. We ended the Mega-C hearing about an hour ago.

MR. WALTER: Glenn Walter from --

MR. PARDO: It's very hard to hear.

MR. WALTER: -- Skadden Arps on behalf of Dr. James Nave. Glenn Walter from Skadden Arps on behalf of Dr. Nave. I will not be arguing.

THE COURT: Right.

Are there other counsel that are on the telephone who intend to argue the matter before me today?

(No audible response)

THE COURT: No. Do you know of anybody, Mr. --

MR. BJORK: Your Honor, this is Jeff Bjork from Sidley Austin for the PropCo lenders. I don't plan to argue, but if the Court has questions, I'd be happy to address them as it pertains to our client.

THE COURT: Thank you.

MR. KRELLER: Your Honor, I believe Oscar Garza from FCP PropCo from Gibson Dunn was going to be on the line, and I believe he was going to argue as well. They did submit papers.

MR. GARZA: Yeah; Oscar Garza is on the line, your Honor, for PropCo.

THE COURT: Thank you. I can hear you.

I want to apologize to everybody. I have no idea how we find ourselves in this situation except to tell you that I've notified our Chief Judge, the Clerk of the Court, anybody else I could find, because this is unacceptable to us, and I apologize to counsel, and I have no idea. Technology is wonderful until it fails.

I have read the following pleadings, and I'm assuming the recording is working.

THE REPORTER: It looks like it.

THE COURT: No, that's not the right answer. Is this being recorded?

THE REPORTER: As far as I know, yes, sir, it is.

THE COURT: Okay. Can you monitor?

THE REPORTER: I am monitoring now, sir, and --

THE COURT: Okay, thank you.

THE REPORTER: -- I am getting the delay.

THE COURT: Make sure it's being recorded.

I signed an order shortening time to hear an emergency motion for stay pending appeal regarding the order establishing bidding procedures which I believe is still the only order I've entered as a result of the hearings I conducted at the end of May, is that correct?

MR. KRELLER: That's correct, your Honor.

THE COURT: All right. That's docket number 1603.

I read the emergency motion itself, docket number 1589; I read the debtor's objection, docket number 1638; I read the response by the administrative agent that's filed on behalf of Simpson Thacher, docket number 1639; I read the opposition filed by debtor FCP PropCo, and that's Mr. Garza, docket number 1640; I read the declaration of Jason Friedman, docket number 1643; I've read the joinder of Bank of Scotland, docket number 1647; I've read the response of the official committee.

Have I read all the pleadings that have been filed in support of and in opposition to this motion?

MS. AXELROD: Yes, your Honor.

MR. KRELLER: I believe so, your Honor.

THE COURT: All right. I have read the transcript of a hearing conducted May 28th and May 27th. I apologize for

being as inarticulate as I generally am, but I'm accustomed to reading to myself that way. But I do actually think there were some errors made by the reporter in that situation, but, so I've read it. I'm very familiar, and I went back and reviewed all my notes so that I was familiar with the arguments that were raised on that day as well as the arguments.

I also conducted a hearing, and I believe that that was conducted -- I thought it was on June -- the emergency hearing when I dealt with this issue and I pointed out that I had applied the heightened scrutiny test, and I --

THE CLERK: June 10th, your Honor.

THE COURT: That was June 10th, and I have the minutes of that hearing. And I've familiarized myself and I have reviewed docket number 1563, which was the order establishing bidding procedures. I've read the appellant's statement of issues and designation of record on appeal, and I just took a quick look at docket number 1554, which is another submission for the revised bidding procedures, just so I knew what was in front of me. So I think I'm familiar with all the facts in this case.

I'm going to make -- Before I hear argument, I want to indicate the legal basis upon which I'm evaluating this motion for a stay. Both parties really have not disagreed to any great extent regarding the test, but let's just review it so that we know what it is.

Generally, the test is applied when one looks at Federal Rule of Civil Procedure 62 and also Rule 65, which deals with injunctions, and it's a four-part test. To obtain an -- excuse me. And then also Rule, Federal Rule of Bankruptcy Procedure 8005.

Generally the appellant must establish the following elements in order to obtain a discretionary stay pending appeal, which is what's being sought here: That the appellant is likely to succeed on the merits of the appeal. That, so that you-all know, is both on substantive and procedural grounds. Judge Markell noted that in *Smith*. I've done the same thing in other matters, and the procedural issue at the forefront here is whether or not this appeal is interlocutory. I'll deal with that.

I do recognize that that decision, whether it's interlocutory and whether leave would be granted then to allow the appeal, would be before the United States District Court and not me, but it does play in to the analysis of whether or not the appellant would have a reasonable likelihood of success.

The second element: The appellant will suffer irreparable injury if no stay is granted. I understand the allegations of irreparable injury. I would say that there's very little, if any, evidence of those, but I understand the allegations.

No substantial harm will come to the appellee as the result of the stay. It's the committee's position that the debtors and their non-debtor operating subsidiaries can continue to operate and there's no prejudice overlooking the reorganization effort itself and the fact that revenues have been declining and that there are deadlines provided for in certain orders and other documents that compel some action to be taken in fairly short order.

Four, the stay will do no harm to the public interest. There is a public interest in reorganization; I'm familiar with the committee's arguments in that regard.

There is also the assertion that there's a sliding scale test. I will tell you I'm skeptical of that, and let me explain why. The four-part test was articulated thirty years ago by the Ninth Circuit in the *Wymer*, W-y-m-e-r, case. That can be found at 5 B.R. 802.

The potential for the sliding scale, which is if there's a greater likelihood of success, you don't need as much of a showing of irreparable injury, or if you have great irreparable injury, you don't need to show even a greater likelihood of success.

Well, the United States Supreme Court in *Winter versus Natural Resources Defense Council* at 129 Supreme Court 365, 208, rejected an argument that if a plaintiff seeking a preliminary injunction showed a strong likelihood of prevailing

on the merits, the plaintiff could obtain a preliminary injunction by showing only the possibility of irreparable harm. The Supreme Court made it clear that the likelihood of irreparable harm is the standard regardless of how strong the likelihood of prevailing on the merits. And I agree with the majority of the courts that each of the four elements must be satisfied by a preponderance of the evidence. They are conjunctive; they all must be satisfied.

And I thought a good discussion of that was found in a case decided two years ago, *In Re: North Plaza, LLC*, at 395 B.R. 113, from the Southern District of California Bankruptcy Court 2008, an appeal from the United States Bankruptcy Court from the Southern District of California. It articulated the four elements that I've just placed on the record; indicated that those factors were imported from the standard for deciding preliminary injunctions or staying them pending appeal.

District courts have not agreed on how to apply the discretionary stay factors when deciding whether to stay a final bankruptcy order pending appeal. Notice it did say a 'final' bankruptcy order. It compared certain cases, *Rose Townsend Trust versus Johnson*, and *Silicon Valley Bank versus Pawn* with *Lynch*. In the first two cases, it was held that there had to be a showing of likely to succeed rather than merely presenting a substantial case, and that each of the four factors were conjunctive and the movant would not win a stay

unless each factor is established by a preponderance of the evidence. I've already indicated that's the test I'm going to apply.

Lynch held that there was a traditional Ninth Circuit sliding scale balancing test used for preliminary injunctions and temporary restraining orders which the Court in the Southern District found that the *Lynch* sliding scale approach ignored the procedural posture of a Rule 805 stay -- 8005 stay, excuse me -- when the movant is appealing a Bankruptcy Court's final determination on the merits. Quote:

> 'A sliding scale approach, which often results in disproportionately waiving the irreparable harm prong, is appropriate for preliminary injunctions because a court deals with a dispute on first impressions, relies on the less-than-developed factual and legal record and will ultimately revisit the issue down the road. In contrast, whereas here, a court has taken extensive evidence and briefing and issued a determination on the merits, an interest in finality arises. This finality would be rendered impotent if an enjoined party could always raise the specter of irreparable injury to trump the trial court's order no matter how unlikely an appellant victory on the merits. Thus, the Court considers *In Re: Johnson* and *In Re: Pawn* persuasive and requires

that appellants show that it is more likely than not that they will succeed on the merits whatever the possibility of irreparable injury.'

So, no sliding scale. And I think that that opinion is consistent with the determination made by the United States Supreme Court. And I have a number of other cases in front of me that the parties have cited, but other than that I didn't see any distinction.

As indicated, I've read the transcripts; I'm familiar with the facts.

When I first read this, before I read any of the oppositions, because I read the oppositions long after I read the motion itself, and my notes were it appears to me, and I am not making a determination, that there is at least a substantial likelihood that this would be considered an interlocutory order. And in any event, that would be decided by the United States District Court.

And let me explain my thinking so you can respond if you care to. The bidding procedure is one of two orders that I granted at the end of the hearings that were conducted May 28th. The other was of course I approved the compromise, the second compromise, under the master lease. And it's important to remember that that was the second compromise, because there was a prior order that had already set in place certain obligations that the parties to that agreement would have in

the future. And those aren't changed by the order that I orally approved on May 28th.

But the bidding procedures clearly are related to the master lease compromise agreement insofar as the excluded assets. And one of the bases of the appeal is that I should have required a valuation of each of the assets that's being excluded and that will go to new PropCo and will not be available to the bidder for the OpCo assets. I believe that that's right at the heart of the entire appeal.

And I understand that. And when I read the transcript, I made it clear then and I'll make it clear now, I understood, and in fact it was argued that there was no specific valuation. At best, there was some type of indicative value, some implied value, to establish a range, and I tried to make that clear in my findings. And so that's clearly a legitimate, I think, basis to have it reviewed, and I understand that.

But the bidding procedures, because of that, necessarily have to relate to the master lease compromise agreement because that's where those valuations, to the best that they are valuations, actually occur and the obligations of the parties are established.

And then finally, the bidding procedures only establish a process for the auction itself. They don't result in the sale of anything. By itself, nothing occurs except

triggering the auction process. The sale which is set for August 6th does not result in a consummated transaction. That only occurs if I approve the plan of reorganization, and it's certainly not preordained.

And at that time, because I noticed in the pleadings there was reference to 1129, I believe (a)(3), in good faith because of the assertions regarding the fact that insiders are benefitting to the detriment of creditors, unsecured creditors I should state, the OpCo estate. It should be pointed out that all other creditors in all of these estates, other than the unsecured creditors and certain independent lenders, have not opposed or in fact have supported not only the bidding procedure orders but the master lease compromise agreement.

I also denied, it should be noted, at that hearing on May 28th, giving any jurisdictional approval to the restructuring agreement because I did not want anyone to believe that the plan was locked into place, because it is not. And I thought I made that record clear on the 28th of May, and I'll reiterate it, as I just did, today.

So, the prior master lease compromise agreement did set in place, as I've already indicated, certain obligations and transition services that the second master lease compromise agreement placed some definitive price tag to in the absence of any definitive valuation. And all of that, in my mind, and the reason I approved it, established certain certainty for anybody

who is bidding on the OpCo assets, and also allowed me and all other parties-in-interest to object if it did not believe that the sale could be part of a confirmed plan and satisfy the confirmation requirements, including 1129(a)(3) or (a)(1) or (a)(2). So all of that's been preserved.

So when I evaluated all of that, when I read the points and authorities, my notes originally all of this will be addressed and dealt with, placed into a confirmation order, either -- and I don't think denial of a confirmation order is probably appeal; I think that's probably interlocutory, but -- because you can get additional plans. But if I were to approve the plan of reorganization, then all those matters are set to go forward; that would be the time, I think, to seek any stay and that would allow a full review of the matters that are before me.

The idea is -- And I know there's -- I believe that there is an issue that was raised, collaterally perhaps, on some type of equitable mootness. Well, I don't see that happening because everything is preserved until the time of plan confirmation, and moreover, equitable mootness by itself it not an adequate basis upon which to obtain a stay. Judge Markell, in his *Fulmer* decision, and I don't know if anybody's cited that in this case, that's at 323 B.R. 287, in 2005 cited all the authorities for that proposition, and I think he's absolutely correct.

So that's the -- that was the legal analysis, and that was my initial impression when I read the -- when I read the points and authorities. And I paid particular attention to the reply, page five of the reply that was filed Friday, the 18th. I think this is the paragraph; I found it in line eleven:

'Further, the stay only lasts as long as the appeal is pending and the committee is committed to working with the debtors in district court to have all the issues determined as expeditiously as possible by seeking both expedited briefing and an expedited hearing with respect to the appeal. Such expedition will lessen any impact of the appeal on the debtors' estates and will reduce the length of time that any such stay will have.'

Then it's pointed out below that any decision regarding whether it's interlocutory rests with the district court pursuant to Rule 8003, and I totally agree. But my point is, is that I have to take into consideration likelihood, and I don't think you disagreed with that.

MS. AXELROD: No, your Honor.

THE COURT: All right. So that's -- And then you argue it's a final order. First you tell me I don't make the decision; then you say it's a final order, and I assume you want me to look at it as a final order for the purpose of the

evaluation of the reasonable likelihood of success, and, I did.

All right. I think that's all I need. That gives you my legal approach, a little quick look at how I've applied the facts as I understand them to that -- to those factors, and I'll be glad to hear argument.

ARGUMENT OF UNSECURED CREDITORS COMMITTEE

MS. AXELROD: Thank you, your Honor. Brett Axelrod for the unsecured creditors committee. And thank you for the preliminary comments; that can shorten up the time because I know it's difficult for people to also hear on the phone with the technical difficulties.

To first start, your Honor, on --

THE COURT: Let me make sure. Can everybody hear Ms. Axelrod?

(No audible response)

THE COURT: Can you hear me?

MR. SPEAKER: Yes, your Honor.

THE COURT: Can you hear Ms. Axelrod?

MR. SPEAKER: Yes, your Honor.

THE COURT: Go ahead.

MS. AXELROD: First, your Honor, to address some of the concerns that were raised, the committee's position is that the bidding procedures must stand or fall on its own merits even though they were presented by the debtors and the supporting parties to that in a holistic approach.

THE COURT: What is final about it?

MS. AXELROD: What's final about it, your Honor, is that the bidding procedures determine finally what will be exposed to the market place and take off the table the excluded assets. The bidding procedures set the price at the $35 million dollars. The bidding procedures also set the benefits to the insiders as part of the stalking horse bid and a stalking horse bidder is bidding on one set of assets, your Honor, versus the third parties are bidding on a different set of assets, and the bidding procedures set, for lack of better terminology, the purchase price adjustment that those third parties would be entitled to receive that does not equate to a valuation under traditional standard.

THE COURT: But those benefits that the third parties might be able to receive, nobody provided me any valuation, including your experts, that they have any significant value to OpCo. If they have value at all, it is value to the new PropCo. So in that event, any bidder will know what it is getting, and only after that will we have any real hard evidence of how that's evaluated.

I mean anything that we decide at this time is speculation based upon how they will bid, except that we know, based upon the evidence that I had that Boyd, who was heavily involved in negotiations, was concerned about a number of these items, including the computer system; was concerned -- we know

that pan gaming (phonetic), when you take a look at Exhibit 34, it looked at the customer lists and was skeptical about the value of those.

So if you -- the argument on the other side this provides certainty and the only -- insofar as I can determine, the only concrete way to make that determination is to allow the process to go forward to see if there are bidders. That's the other position. And frankly, I was persuaded of that at the end of May; I don't know why I wouldn't be today.

MS. AXELROD: I understand, your Honor.

The committee's position is that under the 363 traditional-view analysis, as the Court stated, that if you're doing a traditional analysis of this, you would have needed to have more valuation evidence than was presented to you at the May hearings.

THE COURT: If I were doing a sale, by itself in the absence of all the other considerations in this case, not only is there $35 million dollars, but there is a $13 million dollar assumption of debt. There are a number of other non-monetary considerations that we've placed on the table, including established certainty, including putting a price on the Texas Station PUT which was at least $25 million dollars less than Boyd thought.

I mean there's a number of elements that provided, in my mind, a stability that allowed the process to go forward

that make it difficult to place a financial value on it, and in any event, there wasn't really any, and I know that. And if that's a mistake, somebody can tell me, but my point is that's not a mistake that's happened yet because we don't know.

MS. AXELROD: And your Honor, what the committee's concern is, is that by looking at this without establishing some type of market test at the beginning of this process and instead --

THE COURT: Well, you want a second market test, because the whole point was everybody said there was a first market test when they went through the negotiations that were primarily done by the OpCo lenders, because they came up with the stalking horse bid, because the debtor couldn't even participate in the conversations with Boyd. So the point is, is that there will be a second marketing allowed for the non-excluded assets but not for the excluded assets.

MS. AXELROD: Exactly, your Honor.

And the problem that the committee has is that the OpCo lenders do not have a fiduciary duty to our clients of the unsecured creditors.

THE COURT: Well, the debtor's bringing the motion.

MS. AXELROD: I understand, and the debtor has been briefed before. The point is that the committee has concerns about the stalking horse bidder being inclusive of two members of the debtor's board. And when you have insiders who are

selecting the stalking horse participating in this, you have the concern that we have is without the market test, we don't have that heightened scrutiny.

THE COURT: I understand the concern. And as I indicated on May 28th, and as I went back through it again, and also the joinder of Bank of Scotland emphasizes at this point is that there are parties that had economic interests that were not tainted, they're not on the new PropCo side, they're on the steering committee for the administrative agent, and they believe that this is the best way of proceeding and this is the best deal that will maximize the value of the assets for them. And if it only gets them eighty-seven cents on the dollar, that's fine, but of course if it goes -- if the bidding procedure actually results in a sale that brings in more money, that's even better for them I would assume, and of course that would have to be better for you because until that additional thirteen percent is paid to the secured lenders and the administrative priority claims are paid, your clients aren't in the money. That's just -- I don't think that's in dispute.

MS. AXELROD: I'd say it's the practical reality of the posture right now.

THE COURT: Right. So the folks that have the same economic interests were those that were supporting this bidding procedure motion, and also the treatment of the excluded assets. And I fail to recognize or see why they would act in a

way that would be contrary to their economic interests. I don't care about equity, you know, the former equity. I understand your arguments about that. I've looked at Exhibit 19 again and again and again.

The point being though is that those that have a real economic stake that would want to maximize the value of the assets has said: 'This is what we believe is the best way of proceeding.' The only ones that disagree, of course, would be your constituency, because they wouldn't share right now based at the $772 million dollar price, and the independent group of lenders which I've already dealt with on numerous occasions, that may, as I said, that may lead to disputes with the administrative agent but it has nothing to do with the matters in front of me, and I've given them every opportunity.

So I've got to tell you, Ms. Axelrod, that's how I'm looking at this.

MS. AXELROD: And I understand, your Honor. But the $2.4 billion dollar of debt that --

THE COURT: Big money.

MS. AXELROD: -- yeah, that my clients, you know, are also in this proceeding, and they're looking at it from this point of view is to have the pragmatic approach applied, as we briefed, when it comes to if this is deemed to be an interlocutory order by the District Court because, on one part, yes, there's extremely serious money here, and also, too, when

you have the pay-to-play in a bankruptcy proceeding, that even if the unsecured creditors are not currently in the money, that their voices and their concerns are entitled to that appellate review. Standing alone, as we said in our briefs, while that may not be enough on its own when it comes to the irreparable harm, it's certainly a consideration that the Court can take into account, and we cited to the *Adelphi* case and other cases --

THE COURT: I read it.

MS. AXELROD: -- in the Second Circuit, while not binding, we found persuasive because of the stakes in this case and the amount of money that is at issue.

THE COURT: Why shouldn't I let the District Court make all of those determinations?

MS. AXELROD: And your Honor, I do believe it's appropriately before the District Court. We responded in our pleadings because I think it does go to the success on the merits.

THE COURT: I think there's a motion to strike a portion -- I don't know if there's been a ruling on the motion to strike. Isn't there -- Was there a motion to strike? No, that's in the other matter. I'm sorry.

MR. KRELLER: That's the other one, your Honor.

THE COURT: I had two --

MS. AXELROD: I was going to say I hadn't seen it,

your Honor.

THE COURT: I had two state proceedings in two casino cases today, and I apologize. That was in the other one dealing with subordination issues.

MR. KRELLER: That's right.

THE COURT: We don't have that issue here.

MR. KRELLER: Your Honor, the answer to that question is no, by the way; there's been no resolution on that motion.

THE COURT: Okay. That one, we had a bleeding over. I apologize.

MS. AXELROD: On the surface, your Honor, those can be very similar when looking at the cases. But what we have here which makes this case different than some of the cases that were cited is, as your Honor has previously said, this is a very unique case. And also historically how the debt was set up and created to address the first master lease compromise and the second master lease compromise.

As we stated before you for the three days of hearings, that we acknowledge that the first master lease compromise put certain things in place, but what it did not put in place was the price tag, and we'll be addressing that order when it's entered, and we'll be before --

THE COURT: Well, absolutely. See, that's my point, is that there is no doubt in my mind those findings and conclusions would support the granting of the two motions and

the denial of the third, and it was agreed on the record that we would do one consolidated set of findings and conclusions. That if appeal was taken from the other two by the parties who did not prevail, that there's very little doubt in my mind that there wouldn't be some kind of a motion or stipulation to consolidate those appeals.

And that's exactly the point that I was driving to earlier. That automatically happens upon my determination of what to do with the plan. It's all there, and that's what makes it final, because I'm at a loss to determine, candidly, how an appellate court could look at just the bidding or just the second compromise order in a vacuum. I just don't see how it's possible and come up with any rational resolution. And it's not as though time is imminent because the sale itself doesn't take place until August 6th. And the plan confirmation is set, if I remember, sometime in September.

MR. KRELLER: End of August, your Honor.

THE COURT: End of August. So, that's right.

MS. AXELROD: Part of the determination about the public interests factor is also the judicial economy and do we want to be going through a sales process that if --

THE COURT: Do you want to do piecemeal appeals? I mean that's the whole idea of finality is to eliminate piecemeal appeals and why generally appeals aren't allowed from interlocutory orders. I understand the balance.

MS. AXELROD: Uh-huh.

THE COURT: And, you know, let me say this, that by going through with the sales process might eliminate a lot of speculation, and --

MS. AXELROD: The committee's --

THE COURT: -- who knows what the result -- You can't tell me. Nobody sitting here can tell me what will happen as a result of this auction process.

MS. AXELROD: That's correct, your Honor. The committee's concern is that this bid procedures as approved and this auction process that we are not going to have anyone show up at the auction and that the bid procedures themselves --

THE COURT: And when will I find that out?

MS. AXELROD: -- will chill the bidding.

THE COURT: I'll find that out on August 6th.

MS. AXELROD: I understand, your Honor. But that is the committee's position.

THE COURT: So what irreparable injury would the committee members suffer if there is not an imposition of a stay since nothing's going to happen until August 6th and even that isn't final?

MS. AXELROD: When it comes to the committee's irreparable injury is that we're going down again, your Honor, this path and the concern that we raised in the brief, which I know your Honor's agreed with, about the failure to seek a stay

and the equitable mootness and what an appellate court --

THE COURT: Well, I don't think you said that equitable mootness by itself was the basis. I mean --

MS. AXELROD: No.

THE COURT: -- the law is pretty clear on that area.

MS. AXELROD: No, your Honor, but that is an element that an appellate court will be taking up.

THE COURT: What's moot?

MS. AXELROD: Yeah.

THE COURT: If I don't grant the stay today, what will be moot?

MS. AXELROD: The issue regarding the setting of the price of the excluded assets, that the market -- that they will not be exposed to the market place and that the sale will occur.

THE COURT: And how is that moot if the sale is not finally approved until the hearing on the plan of reorganization?

MS. AXELROD: Because of what your Honor earlier had said about these two orders being so intertwined, that part of the mootness is it's so complicated that an appellate court can't effectively remedy if there --

THE COURT: Well, I'm pretty sure an appellate court can do it. If I can figure it out, I know they can.

MS. AXELROD: But that is really the committee's

concern, is because of the complicated stature of these cases and these orders --

THE COURT: Which is my point exactly. Why look at them piecemeal? One time, here it is, here's the plan, here's how the plan's affected; then we determine whether or not there'll be a sale, because then you can tell me, this is the irreparable injury, they can tell me, this is irreparable injury if you don't, and then everybody knows. Every party-in-interest is well aware that you have a right to appeal from that plan confirmation. That is a final -- there is no question, and I don't think Mr. Kreller would argue to the contrary, that an order confirming a plan is a final order.

Because it's the position in all the oppositions is that's the only final order, and then it's all properly before the Court, there's an absence of speculation, we know what happened and whether it's good, bad or indifferent, we can make that determination. And maybe these assets have more value. Maybe the approach that Boyd has taken is the right one. I mean Boyd objected, then withdrew its objections. That says something to me very candidly, and it was the original entity with whom the lenders were negotiating for the stalking horse bid.

This is Bankruptcy Court, and we all know that everybody, until they actually show up with money, people don't have money, and here we don't know that people don't have money

until they don't show up. It's kind of the flip side. I have to admit I'm pretty stuck on that point.

MS. AXELROD: And I understand, your Honor. We don't think that this is by any nature a cut and dry or easy call because of the fact that this is such a unique coupling and because the committee is very much concerned from an outside point looking in if they look at the record, they look at the second master lease compromise, they look at the asset purchase agreements, the bid procedures, that we're going to be deprived of our ability to get the appellate review, and that is why we're seeking the appellate review now, because this is not your simple asset purchase agreement for a casino. This is something much more different than that, and that is why we thought that this is ripe now for appeal.

Unless the Court has any other questions, I'll rest on the pleadings.

THE COURT: No, thank you. Good job; thank you very much.

MS. AXELROD: Thank you.

THE COURT: I'm going to hear from the folks on the telephone first because I'm assuming you can still hear me. Can you?

MR. QUSBA: Yes, your Honor.

THE COURT: Who wants to argue first?

MR. QUSBA: I'm happy to go, your Honor. It's Sandy

Qusba from Simpson Thacher and Bartlett, counsel for the administrative agent, Deutsche Bank Trust Company Americas as the agent on the OpCo Bank facility.

ARGUMENT OF DEUTSCHE BANK TRUST COMPANY

MR. QUSBA: Your Honor, I think you've correctly identified, both at the hearing and at this motion, that the committee's central focus really is with respect to the excluded assets.

They're asking two principle questions and have been since the motions were originally filed in April: whether OpCo could have gotten more for the excluded assets as part of the auction process itself, and two, whether we've chilled the bidding in OpCo by keeping these assets out of the auction. Two legitimate questions, your Honor, but questions that have been thoroughly briefed, subject of substantial discovery, testified to and ultimately determined by your Honor after three days of hearings.

And the reasons for the Court's decision made three weeks ago or so are equally operative now. And while the committee may ask the right questions, they certainly don't want to hear the right answer.

And in the context now of the stay hearing in particular and the four elements that have to be established, and I do believe that *North Plaza* and the rationale expressed in *North Plaza* is the appropriate rationale, that each of the

elements must be satisfied. And the committee, I think, fails on all four of the elements. And we can certainly start with the harm and the substantial harm to the OpCo banks if a stay is granted, and certainly if the appeal is ultimately prosecuted successfully by the committee.

But with respect to the stay itself, your Honor, we are incurring -- we, the OpCo estate -- is incurring substantial administrative costs, as your Honor is I'm sure aware having reviewed the fee statements submitted from time to time by the various estate professionals, committees as well as the debtors as well as ordinary-course professionals. And one need only look to the Friedman declaration and the two exhibits attached thereto, which were essentially snapshots, or meant to be snapshots of the company's cash position from immediately prior to the bankruptcy filing and a more recent budget which shows the company's balance sheet cash as of a more recent date.

And if you look at the exhibits to the Friedman declaration, the two budgets, your Honor, and you just focus on line 5.9, which is total unrestricted cash, and it's on page two of each of the budgets. Your Honor, if you look at the Exhibit A, I believe, which was the budget attached to the DIP order, and it shows that as of July 24th -- and the filing occurred on the 28th of July, your Honor -- this company had in line 5.9 approximately $310 million dollars of cash.

You compare that now, your Honor, to an April 30th, 2010, cash balance, which is, again, line 5.9 of Exhibit B to the Friedman declaration, and we're about a hundred million dollars off of where we were at the beginning of this case. That's a diminution in our value, in our collateral value, your Honor, and we are effectively subsidizing all the litigation in this case. So it is us, the banks who suffer a direct diminution in value and substantial loss by any delay in these proceedings, and certainly a stay would delay these proceedings.

Now, the committee, excuse me, has argued that they're certainly willing to prosecute the appeal on an expedited basis, et cetera, but nothing has happened in the District Court that would certainly evidence that intent to move on an expeditious basis. In fact, it appears to us that there are a hundred and thirty-seven designated items for the record on appeal from just the committee itself. So to suggest that this is going to be done in a very short time frame I think is not really practical, and certainly we would bear the cost of that, which, from our perspective, again, is unacceptable. That's a direct cost that we suffer.

There are also other costs, and that's the risk of losing the settlement in the stalking horse bid itself, which, in my mind, could result in an irreparable injury to the OpCo banks. In particular, your Honor, the consideration in the

stalking horse bid that's been secured is, so to speak, guaranteed. We are guaranteed a recovery of $317 million dollars of cash and some amount of debt, $455 million dollars of debt. But that guarantee is tied to, obviously, the asset purchase agreement and the conditions set forth therein.

One of the conditions included in the asset purchase agreement is that we have to go effective -- we have to close by December 31, subject to some discrete extension mechanics. But the general premise here of the stalking horse bid is that we have to emerge by 12/31. And in order to emerge by 12/31, what was negotiated is that you have to have a confirmation order in place by October 31.

And the time difference between October 31 and December 31 will certainly be used, for example, to get regulatory approvals and other closing conditions satisfied. But if you can't get to confirmation by the end of October, you're never going to be able to hit the end of December emergence date that's required by the stalking horse bid.

Now, to get to confirmation by the end of October, we have to run an auction process, so you have to have sixty days set aside for that. You have to have a disclosure statement; that has to be approved. And if you stay these proceedings and the bid procedures at this point, it seems very, very unlikely that we would be able to maintain that October 31 confirmation date, let alone December 31 emergence date. And the loss, or

the risk of loss, is a very real risk with respect to the stalking horse bid. And again, I submit, your Honor, would cause us irreparable injury and certainly should be considered by the Court.

In addition, your Honor, the committee argues that the steering committee didn't have the fiduciary duties to maximize the value of the OpCo estate. While we don't have a fiduciary obligation, we certainly have something perhaps just as important as a fiduciary obligation, and that's economic incentive, your Honor. Because one thing we have to recognize is while we do have a very substantial and real bid staring us in the face, the $772 million-dollar-stalking horse number, that bid does not get the OpCo banks out in whole.

Okay, we were owed $900 million dollars. Our expectation when we made the loan was to be paid in cash. We're getting less than half of that in cash, and the balance of it in long-term debt. So, your Honor, we're structurally senior creditors with liens, are taking less than par, and a significant portion is less-than-optimal long-term debt, your Honor. The concerns and the hypotheticals conjured up by the committee whose constituents are the bondholders at a structurally junior position in the capital structure should really be given their due weight, if any weight at all.

I understand the committee's position that, you know, right now they may be out of the money, but perhaps by

including the excluded assets in the auction process, they somehow, some way would become in the money. But those are purely hypotheticals, your Honor, while the OpCo banks would suffer real economic damage by not only funding the case for an extended period of time but arguably or conceivably losing the benefit of a $772 million dollar floor bid, which does represent a substantial but incomplete recovery still to the OpCo banks.

Your Honor, on the second factor, the likelihood of success, I again think the creditors committee fails with a preponderance of the evidence to establish that they in fact would be more likely than not to succeed on the merits on appeal. Your Honor I think has appropriately analyzed what value we received for -- 'we' meaning the OpCo lenders as well as the OpCo estate -- received for the excluded assets, and it's not just $35 million dollars of cash; it's also $13 million dollars of assumed liabilities. It's also a further reduction of a million and a half in rent under the master lease because it is tied inextricably to the compromise agreement that was approved as well.

And if you amortize the one and a half million dollars out through to the end of the year which, again, as I mentioned earlier, is the assumption by -- or the sunset date in the asset purchase agreement that the stalking horse executed, that's another nine to ten and a half million dollars

of economic savings for the OpCo estate and the OpCo lenders in particular. So, that plus the thirty-five plus the thirteen, we're now up to somewhere in the fifty-seven to $58 million dollar range of economic consideration.

And then there were substantial non-economic considerations that the OpCo estate and the lenders received, first and foremost obviously the $772 million dollar stalking horse bid, which is somewhere along the lines of a nine to ten times EBITDA multiple on the last twelve months of EBITDA for this company.

We also, as additional consideration, significantly improved over the original proposal made by the stalking horse bid in January of 2010, which the record reflects as well. We converted almost a hundred million dollars of PIC debt which we would have received in consideration to cash, all of which are very material improvements in our position, all of which we would obviously be threatened to lose should this -- should the bidding procedures be stayed and the settlements unwound.

The Texas Station PUT liability, another material consideration that we received. We were in contact with bidders, as your Honor knows, as it was established by the evidence. We had substantial dialogue with Boyd as well as other parties. Boyd in particular expressed grave concern with respect to the uncertainties surrounding the Texas Station master lease, the ability for the landlord to PUT it and then

at what price.

And in fact, a substantial benefit of the stalking horse bid was not only to secure the 772 but also put a pinhole on the liability, the amount of the liability associated with the Texas Station lease, which gives other bidders a lot of comfort and it gives us as the recipients of the consideration an understanding as to what's going to be deducted from our consideration in order to satisfy certain other liabilities.

And obviously, as your Honor has noted on the record in connection with your decision, there was substantial consideration associated by having a more formal separation plan for the OpCo and PropCo assets, avoiding litigation associated with the original compromise agreement, avoiding litigation with respect to title issues, lien issues, and giving us basically a path towards exit. Again, nothing's been decided and won't be decided until your Honor confirms a Chapter 11 plan, but we can't even get there until we're able to auction off these assets. And this is the path, this is the methodology by which the OpCo lenders, the OpCo estate and the PropCo lenders have agreed to pursue.

And your Honor, all those considerations of value that you took into account, those are really factual determinations, and there's no real dispute, I don't believe, with respect to the application of the law. And your Honor obviously used heightened scrutiny on these motions, and, as

you mentioned earlier in this hearing, didn't even approve one of them, meaning the OpCo support agreement.

And anything on appeal with respect to the bid procedures as well as the master lease compromise agreement, in particular with respect to the issue of whether OpCo and the lenders received significant or enough consideration for the excluded assets, I think will be subject to an abuse-of-discretion review and highly unlikely to be overturned given the amount of testimony, given the amount of discovery, and given the three days of evidentiary hearings before your Honor.

Finally, your Honor, there was also concern whether with respect to keeping the excluded assets out of the auction we've chilled the bid process, and this I think relates also to the public policy argument I'm about to make, which is as soon as your Honor, orally at least, approved the bid procedures and the MLCA, the master lease compromise agreement, on the 28th of May, Lazard was hard at work. Lazard is the financial advisor and investment banker for the debtors. They are the ones in charge of actually marketing these assets, the OpCo assets, together with, obviously, Dr. Nave and Skadden Arps as Dr. Nave's counsel, being the independent arbiter on behalf of the OpCo estate with respect to the auction process.

And Lazard put a process letter together. They've gone to market, they've had substantial conversations and many conversations with potential bidders. Parties have entered

into non-disclosure agreements. Parties are spending time, effort and money with respect to doing due diligence on the OpCo assets and getting ready for a date that's coming, which is June 30th, as to when letters of intent have to be submitted.

So, you know, the parties and the market has an expectation now of this process going forward which, again, I think, helps with the public policy argument with respect to the market's expectation and putting this case towards a path of reorganization. And I think to unwind that would due substantial damage to the M and A process for really purely speculative purposes because, as you've pointed out, the committee certainly hasn't demonstrated any degree of certainty with respect to the excluded assets somehow fetching enough consideration whereby they are now in the money and are being adversely affected by the fact that the excluded assets aren't part of the auction process.

So I think Lazard's effort to date, the fact that the compromise agreement with the bid procedures actually puts this case on a path to exit are all public policy considerations that your Honor should take into account in denying the creditors committee's stay motion.

And if your Honor has any questions, I'd be happy to answer them.

THE COURT: No, thank you. Mr. Garza?

MR. GARZA: Your Honor, I'm going to just focus on one issue, and that is the likelihood of success on the merits of the appeal. The committee ignores the fact that the original master lease compromise agreement already provided PropCo, my client, the exclusive right to acquire the majority of the excluded assets, so I'm unclear how the committee having the right to have some right after this to market these assets to third parties since under the first compromise, which was not appealed by any party, the majority of those assets were already required to be sold to PropCo.

Second, and I feel like we've already talked about this many times before, without the compromise, and we may not have a compromise if we don't have this bid process go forward, without the compromise, there's going to be a real dispute as to what assets belong to FCI and what assets belong to PropCo. And as we stated before in the previous hearings, there is going to be a lot of litigation that's going to ensue between the parties in order to determine what can be sold. And so at this point, your Honor, I would suggest that the orders that were approved or properly approved, they took into consideration all the issue, including the massive litigation that would ensue between the parties if both the bid procedures motion and the compromise were not approved.

THE COURT: All right. Mr. Kreller?

ARGUMENT OF STATION CASINOS

MR. KRELLER: Your Honor, I'll and be brief, but Mr. Qusba and Mr. Garza have touched on points that I'll try not to reiterate.

Just opening and to step back, let's remember that a request for a stay like this pending appeal is an extraordinary remedy. The cases, the *Smith* case and the *Fulmer* case that we cite to I think established that pretty clearly. It's an extraordinary remedy, and the UCC bears the burden to prove each of the four elements, the four prongs we've been talking about.

Just really very briefly on each of the four, the likelihood of success on the merits. Your Honor, I agree entirely with your analysis of how the interlocutory order issue plays in here. I agree with the committee that that's an issue ultimately that that decision is a decision for the District Court, but I also agree that that is something that you take into account when assessing the likelihood on the merits, and if you conclude that it's likely that the District Court concludes that it's a non-appealable interlocutory order, I think that weighs heavily on the factor of the lack of likelihood of success on the merits.

And your Honor, when you look at and think about whether an order is a final order, what the cases tell you is that a final order is one that finally determines the discrete issue to which it is addressed and seriously affects

substantive rights. I think for all the reasons that you've actually identified in your preliminary remarks indicate that this is not that kind of a final order.

The issues that the committee has been concerned about that they raise in this motion and that they've raised throughout are issues about bid chilling, insider dealings, self-dealing, a tainted process, some sort of wrongdoing by the debtors. Your Honor, this is simply an order that establishes a process that is designed to lead to a sale.

And as you recognized at the outset, we're going to have to be back in front of you at a confirmation hearing seeking approval of that sale, subject to all of the applicable requirements in 1129 and 1122 and 1123. That's the final order that ultimately will be appealable. That's the final order that will finally determine the discrete issues about the disposition of these assets and it will seriously affect substantive rights. This bid procedures order that initiates the sale process is not such a final order.

Your Honor, if we look at the issues set forth in the committee's motion and think about them in the context of the likelihood of success on the merits, I think it becomes pretty clear that the burden has not been met here. Frankly, even as pled, the motion pleads them under the wrong standard. It says the committee will be able to meet its burden that it has a fair chance of success on the merits of the appeal. That's not

the standard, your Honor. The standard is that they have to prove to you by a preponderance of the evidence that it's more likely than not that they will prevail on the merits. So simply as pled, their motion fails.

But if we look at the four factors, the four issues on which they think they have a fair chance of success, I think that it's pretty clear that their burden, even on those issues, they've failed to carry their burden.

They talk about the Court having insufficient evidence that the bidding procedures were an exercise by the debtors of their business judgment. Your Honor, I won't go back through; we did in some extent in our papers cite you to the record on this. But clearly you've got Haskins, Aronzon, and Friel (phonetic) declarations on the evolution of the bid procedures and a wealth of a record on why the bid procedures in this process is in the best interest of the estate; nothing other than this naked statement by the committee on this issue.

Item number two, the debtors didn't value the excluded assets, and there was no evidence before the Court that the excluded assets were being transferred for fair consideration. Your Honor, if there was no evidence before the Court, I don't know what we were doing here for three or four days on this stuff. You've have live testimony, you've had deposition transcripts of nine witnesses. You've had, in addition to Mr. Haskins and Mr. Friel, you had Mr. Krieger,

from Mr. Qusba's client you had Mr. Genera and Mr. Caruso's testimony on this issue. Remarkable that the committee can say there was no evidence before the Court. They may not like the evidence, they can even try to argue that the evidence wasn't sufficient, but there was an awful lot of evidence in favor of those findings and nothing to the contrary coming from the committee or the other objectors.

Your Honor, point number three, the Court applied the incorrect legal standard in evaluating a sale to an insider. You didn't evaluate a sale to an insider. This goes right to the interlocutory order point. You didn't conduct a 363 analysis of this transaction because the stalking horse transaction was not and is not in front of you for approval, and may never be. We will run this process, there will be an auction, the stalking horse bid may prevail; it may not. A different bid may prevail that looks very different than the stalking horse bid. We don't know. That's what makes this all interlocutory and speculative.

So just the very way they've phrased this shows you the problem with this motion. This isn't about the bid procedures order. They don't like what they see down the road in a confirmation hearing in the plan. They'll have the ability to let you know about that.

Finally, your Honor, the Court did not consider whether the bidding procedures were in the interest of OpCo.

I'll just refer you to the transcript cites, your own statements on the record at the hearing on the 27th and I believe on the 28th in terms of how you considered and how you viewed this transaction and these bid procedures.

Your Honor, on irreparable harm, again, I'm going to go back to this theme: The assets will not be sold until you order them to be sold. This order initiates a process where the debtors will proceed in good faith with the auction process, as approved and as defined in the bid procedures order. At some point in the future, hopefully the very end of August, we will show up with the prevailing bid from the auction, and we will have to prove to you all of the elements: that we proceeded in good faith, that it was the highest or otherwise best auction -- the best bid coming out of an auction over which you will be presiding.

The committee I'm sure will pursue discovery on all of their allegations again of conflicts and insider taint and all that other good stuff that makes the headlines. All of that will get vetted. If they find something that proves to you that we haven't carried our burden, the assets don't get sold and their rights have not been affected. But as we sit today, your Honor, number one, they've yet to find anything like that in this case on any of these various issues. And number two, all of this is remote and speculative. It is not the kind of actual, imminent or irreparable harm that they need

to prove to you by a preponderance of the evidence in this kind of a motion.

Your Honor, on the third prong and the harm to other parties if the stay is granted, I think Mr. Qusba articulated the risks, and because of the way the deal has been put together, I think the estates and the OpCo lenders are very much aligned in a number of these issues. I'm not going to reiterate that. This is obviously a very carefully crafted and balanced resolution on a number of fronts, with a number of constituents, with a lot of economics at stake here. And a stay that is simply a perpetuation of Ms. Steingart's request for a do-over really threatens to unravel something that the economic stakeholders in this case have worked long and hard to put in place. And it puts the estate in real jeopardy if we're not allowed to proceed in good faith after these transactions.

Finally, your Honor, on the public interest component, I think the Court has appropriately recognized the need here. Given this capital structure, given this organizational structure, given the way these assets have been operated historically, I think you've recognized on a couple of occasions the need for a rational, well-thought-out and economically sensible separation of the businesses. That's what we're pursuing. We're pursuing it in good faith. We're working around the clock to do so. We continue to do so, and we're doing it at this point with substantial creditor support.

I think that's precisely the kind of a reorganization that is at the heart of Chapter 11 and the public policy behind the reorganization in allowing reorganizations to go forward in this manner. That is not -- that does not prejudice the committee's rights to come in and object to plan confirmation or come in and object to the disclosure statement. We've got big hearings coming up in this, and there will be a lot put in front of you I am sure. So they retain their right to challenge our efforts to pursue this reorganization. But given the economic realities here, the public interest really attaches to the debtors' right to pursue its attempted reorganization, particularly when we have the level of creditor support we have here.

Unless you have any questions, your Honor, I don't have anything else.

THE COURT: Ms. Axelrod?

FINAL ARGUMENT OF UNSECURED CREDITORS COMMITTEE

MS. AXELROD: I'll be brief, your Honor. To address some of the points that were raised, the one overwhelming issue and theme here really is that in bankruptcy, there really is no community property, and you are really looking at, for separation of these two businesses, OpCo is entitled to its assets and the value of its assets. And to leave some of that value on the table for the PropCo creditors is one of the real issue of irreparable harm and lack of fairness that you've

heard from the committee throughout these cases.

And there is always the temptation for the practicality that these are businesses that were operated together.

THE COURT: No, and I'm aware of that temptation, and I attempted to address it on May 28th, because this is a little -- this is a different type of case. I'm well aware of the values. And I don't remember if I did make the baseball analogy, if I've got two shortstops, you don't have any. The same shortstop may not have much value to me while it has great value to you, but if I'm going to buy the ball club, how much am I going to pay for the extra shortstop? I don't know the answer to that question.

So, I feel I've got some assets that perhaps have value for another party but not to any other party, and somebody is going to buy the estate that has those extra assets, how do they know that new PropCo is going to buy it and maybe they'll go ahead with the stand alone IT; who knows? So that's -- I did attempt it. I'm well aware of that.

In addition to that, you know, the PropCo debtors have their own fiduciary obligations to maximize value. So you had the competing tensions, which is why I looked at what I thought were the economic motivations between both parties which, once again, gets me back to where I was, that those that have no relationship to the debtors other than that they were

lenders and will not be part of the new PropCo group support this process; those being the other members of the steering committee.

So I didn't want anybody to think I didn't look at it. I'm fully aware, because it's a legitimate point, and I wrestled with it. And somebody may well disagree with me, but I -- because it just looked like if you didn't have a new PropCo, what would those values be to OpCo? Not very much. Everybody, for the most part; I don't think there's any real doubt about that --

MS. AXELROD: Well --

THE COURT: -- unless you have somebody that wants to buy them. What is the value of the word, you know, over (phonetic) or stations? What is the value of a computer system where servers are located in competing facilities? I don't know the answer to that question, but I get a sense it isn't great. And so -- And that's reflected, as I said, by the Penn expression of interest, Exhibit 34.

The point is you're right, and I thought about it. And, as I said, others may disagree with the final result, but I didn't want anybody to be mistaken to think that I did not appreciate the legal issue itself.

MS. AXELROD: And I recall hearing that at the hearing when the Court struggling with that. But part of what we have here is that we've heard a lot about the value is not

there, no one else but PropCo, and it was the debtors' burden under 363 to come forth with that valuation. It wasn't the committee's burden.

THE COURT: Oh, I understand, and that goes right back to the valuation issue. And counsel, you and Ms. Steingart and Mr. Winston and Mr. Goldberg on behalf of the independent lenders, you did a great job of emphasizing that. No, I understand --

MS. AXELROD: And that just --

THE COURT: I understand the concern.

MS. AXELROD: And that's where we're addressing the irreparable harm, and I just wanted to clarify the record --

THE COURT: It will --

MS. AXELROD: -- because of some of the statements made about --

THE COURT: Sure, go ahead.

MS. AXELROD: -- evidence right now about what's going on with market expectation and the market test, and there's no evidence.

THE COURT: I have -- I was about to object myself, okay, but I -- but I thought --

MS. AXELROD: I don't like objecting during argument, your Honor.

THE COURT: I thought the point was, okay, I'm not going to rely on anything Lazard's doing because I have no

evidence of whatever Lazard is doing except that I would have to think that we would all be stunned if there weren't something going on because I'm aware of the deadline, okay?

MS. AXELROD: And then the last issue, and this again gets to the heart of why we brought -- part of the reason why we brought this motion now, is that you're hearing a lot about the deadlines: the deadline of October 31st, confirmation order in place, effective date 12/31. Without doing an expeditious appeal, those deadlines are at risk, and if we wait till the end of August and take the appeal then, and so that is also --

THE COURT: Well, I don't place -- Just so that the record is clear, and maybe I should, but I don't place a huge emphasis on those deadlines. I didn't do it before earlier -- at earlier stages in this case and I'm not doing it now. I do take account of them. But in terms of the weight that I place on them, those are the same deadlines established by the parties that want me to go forward with the bidding procedure and, I'm sure, with the plan of reorganization.

And if that deal -- if this deal is really in the benefit -- provides the benefit that is asserted, as I said earlier, I would assume there's some flexibility with deadlines, because they're in a sense self-imposed. But at the same time, they're real in the other sense because, remember, the administrative agent represents a consortium.

And you also have to remember that, you know, really

the OpCo lenders are acting as the equivalent of exit financing in this case, at least for OpCo. I mean the committee, as I indicated, has not been able to provide me with any evidence that anybody else is willing to make any financing. And this, more than half the purchase price, is being financed by those that presently have the debt on these assets. So, I took all that into account.

MS. AXELROD: The --

THE COURT: And the unsecured creditors don't have any of that risk. I mean they're either in or out of the money. I mean they made their decision regarding their risk when they made their investments.

MS. AXELROD: Yeah, as did all the creditors in this case.

THE COURT: Right, and now they have the security and now these same creditors say 'We realize we're only getting eighty-seven cents on the dollar, but we think this is in our best interest'. And as I said, those that do not have any interest in new PropCo have arrived at the same conclusion. I understand the independent lenders are looking at it differently, but they're the minority and they're bound by the agreements they entered into with the administrative agent. So I just didn't want you to think that I hadn't looked at it.

MS. AXELROD: No, I know you have, your Honor.

And then the last is to address the administrative

cost to this estate. If the OpCo lenders, they're in the position that if they didn't want to have this process and this run forward and bear part of that cost, they could always file the lift stay in front of your Honor if that's truly where the values are at. Thank you.

THE COURT: All right. Obviously I did a lot of work in advance of this hearing, and I asked Ms. Axelrod some pretty tough questions that I was interested in the response to them.

RULING OF THE COURT

THE COURT: When I first looked at this and wrote up my notes, there were several things that came to mind. First of all, the legal basis, and I've already put on the record the legal analysis that I'm applying to the facts that are before me. The four-prong test must be established by the movant by a preponderance of the evidence in order to get the extraordinary remedy of the discretionary stay pending appeal.

In applying that burden of proof, I am going to deny the motion. And my analysis is on each of the prongs, I think -- I don't believe that the burden has been established regarding the substantial likelihood of success on the merits, both on the substantive issues as well as on the procedural issue. And even if I'm wrong, certainly on the procedural issue, the committee is not foreclosed from seeking exactly the same relief from the United States District Court. And the United States District Court will have to make a determination

on whether or not the appeal is interlocutory, and if it is interlocutory, whether or not it will grant leave to appeal, which it can do when certain tests are met in a bankruptcy context.

I think earlier in the hearing today, and by reference to my findings on May 28th, indicated why I think the bidding procedures motion was properly granted. I've looked at it again, and I mean in a sense this almost compels you to go through a 9023-type of -- Federal Rule 9023 analysis, and I've done that, and I do believe that the committee has not been able to establish a reasonable likelihood of success. It may have, quote, 'a fair chance', quote and there may well be significant issues, but at least as regards to the bidding procedure, no.

And I also believe that it's clearly interlocutory, but I'll leave -- and so that leads me to the conclusion that you will not -- that not only do you have little -- you don't have a substantial likelihood, I don't think you have even the possibility, but Judge Jones may disagree with me.

You know, the sale won't occur unless a plan is confirmed, and that first requires a sale, a disclosure statement and the plan. Anything that we would try to do in anticipation of those events is just speculation. And it's far easier to evaluate those when the events have occurred and when the parties have had their rights preserved to be able to

object.

And I, while not stated, because I think parties are somewhat reluctant to make this argument but I'll address it. There's nothing, as I indicated, preordained. And we've heard the argument of counsel. I rely on that argument. They're not going to be able to come back in August and say 'All these meets are decided by your earlier orders' when they've told me clearly that all those issues have been reserved. They have been and they will be treated that way.

So, you know, and the same for the master lease compromise agreement, which is a transfer of those excluded assets for $35 million cash, $13 million in assumption, you've got non-monetary consideration, you've got about nine million dollars in reduced rent. You know, nine million dollars covers some of the administrative costs if nothing else in this case. But even there, nothing is final until the plan of reorganization.

And, of course, if I don't approve the plan of reorganization, the prior compromise still is effective, and that did, as indicated, provide for the transfer of certain assets. And I just don't see any irreparable injury that the committee or the committee members will suffer if I do not grant this stay, and that's a test. There isn't any. What's going to happen? There's going to be a bidding procedure. Maybe it will result in a great benefit to the secureds,

administrative claimants, priority claimants and the unsecured claimants. I don't know that. As I said, nobody knows that.

If in fact it is and there's evidence that the sale was chilled, we'll know that. We will know that. But there's no injury. I just don't see the injury.

And I do see that there is a potential for substantial harm to other parties-in-interest, and this ties in with the earlier comment that some of the other parties-in-interest are also debtors and they have the responsibility to maximize the value of the assets for their creditors.

And, as I noted and I think counsel had it right, Mr. Qusba had it right that the secured lenders have made certain decisions. They have agreed to take certain monetary haircuts. They have agreed to provide financing. They have negotiated and they are at risk, and at greater risk than when they entered into this transaction. So whether it's irreparable, I would tend to think it is because I don't see where the ultimate monetary recovery would be, and that's the test. So I do think that they are at risk.

As to the stay will do no harm to the public interest; there is a public interest in the reorganization process. There's a public interest in maximizing economic value that provides jobs for thousands and thousands or people. That is an important cog in the economic vitality of a community. And keeping these casinos operating with the

potential to sell or reorganize that provides that benefit, in the absence of any evidence to the contrary, is an important consideration. That's the underlying theory of rehabilitation in a Chapter 11, and that's something that I indicated on May 28th I think is important.

There's also potential issues, I believe, with regulatory authorities in the event it doesn't go forward, and then of course then there's a whole laundry list of, you know, the parade of horribles. I don't know, but I get a sense that -- in fact I think the committee stated that these ownership and lien issues and potential litigation were all a ruse. Well, as I indicated then, that's asking me to accept statements made by officers of the Court that would not be true, and also the evidence that's in various declarations, and I'm not in a position, in the absence of any evidence to the contrary, to do that.

I think that what still underlies this entire position is leverage in an attempt to arrive at some type of negotiated resolution that would provide some economic benefit to the committee that. in the absence of, it is difficult to see how it would obtain because of the economic realities in these cases. And the bidding procedure order itself is an attempt at perhaps to provide that benefit to the committee, but the committee is convinced it won't. But if it doesn't the remedy still exists; and if it does, we'll know on August 6th.

So I just can't arrive at the result that the committee is asking. There is no evidence that the excluded assets will or could result in a higher bid, and we don't know at this point whether or not the stalking horse bid will be exceeded or not.

I don't see any potential for equitable mootness in this case because until the plan of reorganization is before the Court, there's nothing final. So I looked at that issue as well.

I have considered the relative harm to other parties, and I don't believe that the UCC is in any imminent risk, and I don't think that they've shown that there would be any harm to the public interest in the absence of a stay. And in fact, as I've indicated, I believe just the opposite could well result.

You know, when you look at *Adelphi*, *Adelphi* is interesting, and I think what you want to do there is wait until the confirmation order. I sort of thought that's what *Adelphi* was saying, and I think you cited it, and I agree with that, but that's the whole idea of the confirmation order.

I see far more risk to the debtor and the lenders and the other parties if a stay were to be issued by this Court than any harm at all from this order that would be incurred by the constituents of the committee because, truly, this order is an adjunct to confirmation.

All of the factors that I analyzed in making the

determination and approving the bidding procedure order was done based upon the obligation that I had to apply heightened scrutiny, and that's why I looked at them as hard and as long as I did. And that's also one of the factors that played into my decision to deny approval of the OpCo support, restructuring support agreement.

And I believe that the orders I entered preserved this Court's discretion and avoided a crimp to a plan, preserved the rights of the parties to object after testing these assets to the market, which I really believe is the entire purpose of the process.

And as indicated for the excluded assets, there was a lot of evidence regarding the negotiations, the participation by Boyd Gaming, other interests owned by others regarding the Texas Station PUT, ownership issues and a number of other matters. And I think that certainly this provided -- could well provide a benefit and, as I've already stated, the result of the auction itself will be a better indication than anything we can speculate about at this time.

And I know the MCLA, master lease compromise agreement, is before me today, but I had to arrive at that range of reasonableness to be able to approve the settlement, and that's what I did, and that order is likewise in my mind an interlocutory as the bidding procedure order because nothing's final, pursuant to that order, until a plan of reorganization

is confirmed. And if I don't confirm the plan, as I've already stated, then you have to go back to the obligations as set forth in the original compromise agreement.

My notes indicated that I have reviewed the UCC's concern that the OpCo assets are not being sold for enough value so the unsecured creditors might get some dividend. I found that to be very speculative as to what that might be. There was concern that the sale will be chilled; there's no evidence it will be chilled.

And in fact, the evidence is that the compromise removes the potential for litigation, provides certainty; it obtains value for assets that would have little value to OpCo since they're not used for the OpCo operations. And there's no evidence that it would enhance the bidding at all, and it's supported by the majority of the secured lenders and by the unaffiliated members of the steering committee, the Bank of Scotland and Wells Fargo. And then of course the plan process itself provides the final protection.

So, for all of those reasons, I am not going to grant the extraordinary remedy of a discretionary stay. I've made my findings and conclusions on the record pursuant to Federal Rule of Bankruptcy Procedure 7052 that incorporates by reference Federal Rule of Civil Procedure 52.

I'm instructing counsel for the debtor to prepare written findings and conclusions consistent with the oral

findings and conclusions and then a separate order consistent therewith. Submit them to all parties who have filed written objections and, of course, to the movant.

Is there anything I've overlooked?

MR. KRELLER: I don't believe so, your Honor. And we will do so.

THE COURT: Okay, thank you. I apologize for the technical difficulties. Usually the technology works well, and it's the human element that you've got to question, but in this case it's the other way around, for which I am greatly appreciative.

Thank you all very much.

ATTORNEYS: Thank you, your Honor.

THE CLERK: All rise.

(This proceeding was adjourned at 5:24 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Signed

July 2, 2010

Dated

TONI HUDSON, TRANSCRIBER